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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
17

19 MONSTER ENERGY COMPANY, a
20 Delaware corporation,
21 Plaintiff,

22 vs.
23 VITAL PHARMACEUTICALS, INC.
c/b/a VPX Sports, a Florida corporation,
24 and JOHN H. OWOC a.k.a. JACK
OWOC, an individual,
25 Defendants.

Case No. 5:18-cv-1882-JGB-SHK

Hon. Jesus G. Bernal
Hon. Shashi H. Kewalramani

**DECLARATION OF FRANK C.
ROTHROCK IN SUPPORT OF
PLAINTIFF MONSTER ENERGY
COMPANY AND THIRD PARTIES
MARC MILES AND SHOOK,
HARDY & BACON L.L.P.'S MOTION
TO QUASH DEFENDANT VITAL
PHARMACEUTICALS, INC.'S
SUBPOENAS**

DECLARATION OF FRANK C. ROTHROCK

I, Frank C. Rothrock, declare as follows:

1. I am an attorney at the law firm of Shook, Hardy & Bacon L.L.P. (“Shook”). Marc P. Miles and Shook previously served as counsel of record for Monster Energy Company (“Monster”) in the above-captioned litigation. I am a member in good standing of the State Bar of California and have been admitted to practice before this Court. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. On or about November 8, 2019, Defendant Vital Pharmaceuticals, Inc. (“VPX”) served subpoenas on Mr. Miles and Shook (“Counsel Subpoenas”). Attached hereto as Exhibit 1 and Exhibit 2 are true and correct copies of the Notice of Subpoena to Produce Documents, Information, or Objects to Marc Miles and Notice of Subpoena to Produce Documents, Information, or Objects to Shook, Hardy & Bacon.

3. On November 22, 2019, Mr. Miles and Shook served timely objections to the Counsel Subpoenas. Attached hereto as Exhibit 3 is a true and correct copy of Non-Parties Shook, Hardy & Bacon L.L.P. and Marc P. Miles's Joint Objections to Defendants' Subpoena to Produce Documents, Information, or Objects ("Objections to Counsel Subpoenas").

4. Between November 2019 and January 2020, pursuant to their Objections to Counsel Subpoenas, Shook and Mr. Miles conducted reasonably diligent searches for documents in their possession, custody, or control responsive to Requests for Production numbers one and three through 14 attached to the Counsel Subpoenas. As part of this process, Shook and Mr. Miles utilized appropriate search terms to conduct electronic searches to identify responsive documents. Shook and Mr. Miles stood on their Objections to Counsel Subpoenas with respect to Request for Production number two.

5. The Counsel Subpoenas seek communications between Shook and Mr. Miles in connection with class action lawsuits filed against VPX:

- *Terrell Barker v. Vital Pharmaceuticals, Inc.*, No. 1:18-cv-06898 (N.D. Ill., filed Oct. 12, 2018) [represented by attorneys from Kohn, Swift & Graf, P.C., Barbat, Mansour & Suciu PLLC, Greg Coleman Law PC, and Lite DePalma Greenberg LLC law firms];
- *Tiffany Ngueyen et al. v. Vital Pharmaceuticals, Inc.*, No. 0:19-cv-60261-DPG (S.D. Fla., filed Jan. 30, 2019) [represented by attorneys from The Alderman Law Firm and Levin, Fishbein, Sedran & Berman law firms];
- *Shirley St. Fort-Nwabuku v. Vital Pharmaceuticals, Inc.*, No. 0:18-cv-62823-RNS (S.D. Fla., filed Nov. 19, 2018) [represented by attorneys from Barnow and Associates, P.C. and Harke Law LLP law firms];
- *Ismail Irman et al. v. Vital Pharmaceuticals, Inc. et al.*, No. 3:18-cv-05758 (N.D. Cal., filed Sept. 19, 2018) [represented by attorneys from Bursor & Fisher, P.A. and Nathan & Associates, APC law firms]; and
- *Kuumba Madison v. Vital Pharmaceuticals, Inc.*, No. 3:18-cv-06300 (N.D. Cal., filed Oct. 15, 2018) [represented by attorneys from Barbat, Mansour & Suciu PLLC, Greg Coleman Law, PC, Kohn, Swift & Graf, P.C., and Morgan & Morgan law firms].

6. Based on their searches, Shook and Mr. Miles do not have any written communications with (i) Mr. Barker or counsel for Mr. Barker prior to the filing of his lawsuit (October 12, 2018); (ii) Ms. Nguyen or counsel for Ms. Nguyen prior to the filing of her lawsuit (January 30, 2019); (iii) Ms. St-Fort-Nwabuku or counsel for Ms. St. Fort-Nwabuku prior to the filing of her lawsuit (November 19, 2018); (iv) Mr. Irman or counsel for Mr. Irman prior to the filing of his lawsuit (September 19, 2018); or (v) Mr. Madison or counsel for Mr. Madison prior to the filing of his lawsuit (October 15, 2018).

1 7. Varun Behl and Michael Todisco, attorneys at Hueston Hennigan LLP
2 and counsel for Monster, Michael Kanach and Timothy Branson, attorneys at Gordon
3 Rees and counsel for VPX, and I have met-and-conferred regarding the Counsel
4 Subpoenas on multiple occasions: on November 25, 2019, December 4, 2019,
5 December 20, 2019, and January 6, 2020.

6 8. Attached as Exhibit 4 is a true and correct copy of a December 6, 2019
7 e-mail chain among Mr. Behl, Mr. Kanach, and me.

8 9. Attached as Exhibit 5 is a true and correct copy of a December 20, 2019
9 e-mail chain among Mr. Behl, Mr. Todisco, Mr. Kanach, Mr. Branson, and Holly
10 Heffner, an attorney at Gordon Rees and counsel for VPX, and me.

11 10. Attached as Exhibit 6 is a true and correct copy of a January 6, 2020 e-
12 mail chain among Mr. Behl, Mr. Todisco, Mr. Kanach, Mr. Branson, Ms. Heffner,
13 and me.

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15 I declare under penalty of perjury under the laws of the State of California that
16 the foregoing is true and correct.

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Executed on this 22nd day of January 2020, at Irvine, California.

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/s/ Frank C. Rothrock

Frank C. Rothrock